

R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

SUPPORT FOR THE CLAIM AMENDMENTS

Support for the claim amendments may be found in the specification, for example, on page 6 lines 4-13, page 6 line 21 thru page 7 line 2, page 9 lines 3-20, FIGS. 1 and 2, and claims 3 and 13, as originally filed. Thus, no new matter has been added.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

The rejection of claims 7 and 8 under 35 U.S.C. §112, first paragraph enablement is respectfully traversed and should be withdrawn.

The specification provides a description of a probabilistic test on page 11, lines 1-17, including a specific example based on volume rate and precedence. Therefore, one of ordinary skill in the art would appear to make and use the invention without undue experimentation. Furthermore, MPEP §2163.II.A.2 states:

Information which is well known in the art need not be described in detail in the specification. See e.g., *Hybritech, Inc. V. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986).

One of ordinary skill in the art would appear to understand well know techniques for discarding packets based on priority without a

detailed description in the specification. Furthermore, MPEP §2164.04 states:

In order to make a rejection, the examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. *In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1990). ... [T]he examiner should specifically identify what information is missing and **why** one skilled in the art could not supply the information without undue experimentation. ... However, **specific technical reasons are always required.** (Emphasis added)

The Office Action fails to provide specific technical reasons why one of ordinary skill in the art would be unable to make or use the invention based on the specification as alleged on page 2 of the Office Action. Therefore, a *prima facie* case has not been established for the rejection. As such, the rejection of claims 7 and 8 should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claims 1-3, 9, 11-13, 16 and 17 under 35 U.S.C. §102(e) as being anticipated by Silberschatz '578 has been obviated by appropriate amendment and should be withdrawn.

Silberschatz concerns an early fair drop buffer management method (Title).

Claim 1 provides a test circuit configured to receive an additional packet to a plurality of packets and store said additional packet into a buffer. In contrast, FIGS. 1A and 1B of Silberschatz appear to show that newly received packets are

buffered directly into a buffer 20 or memory 86. Therefore, Silberschatz does not appear to disclose or suggest a test circuit configured to receive an additional packet to a plurality of packets and store said additional packet into a buffer as presently claimed.

Claim 1 further provides that the test circuit is configured to present an identification signal to a sender to the additional packet identifying the additional packet as discarded. In contrast, Silberschatz appears to be silent regarding a CPU 88 (implied similar to the claimed test circuit) presenting an identification signal identifying a discarded packet. Therefore, Silberschatz does not disclose or suggest a test circuit configured to present an identification signal to a sender to the additional packet identifying the additional packet as discarded as presently claimed.

Furthermore, Applicant's representative respectfully traverses the argument on 4 of the Office Action (concerning original claims 3 and 13) alleging that identifying an additional data packet as discarded is an inherent part of a system. MPEP §2112 states:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. " *Ex parte Levy* 17 USPQ2d 1461, 1464, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)

However, no evidence or convincing line of reasoning has been provided in the Office Action why calculating a discard probability "pa" necessarily results in signal to a sender identifying a discarded data packet. Therefore, the Examiner is respectfully requested to either (i) provide a basis in fact and/or technical reasoning to support the alleged inherency or (ii) withdraw the rejection. Claims 11 and 17 provide language similar to claim 1. As such, the claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 11 further provides a step for discarding the additional data packet in accordance with a probabilistic test without the additional data packet reaching the buffer. In contrast, FIG. 1B of Silberschatz appears to contemplate that a new data packet is stored in the buffer 20/memory 86 before a drop probability p_a (asserted similar to the claimed probabilistic test) is performed. Therefore, Silberschatz does not appear to disclose or suggest a step for discarding the additional data packet in accordance with a probabilistic test without the additional data packet reaching the buffer as presently claimed. As such, claim 11 is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 17 further provides a means for discarding the additional data packet without storing the additional data packet in the buffer. In contrast, FIG. 2A of Silberschatz appears to

contemplate that a new data packet is stored first and discarded later. Therefore, Silberschatz does not appear to disclose or suggest a means for discarding the additional data packet without storing the additional data packet in the buffer as presently claimed. As such, claim 17 is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 2 provides that the test circuit is configured to discard the additional data packet without storing the additional data packet in the buffer in response to a number being at least as great as a second threshold. In contrast, FIG. 2B of Silberschatz appears to contemplate that a new data packet is first stored in a buffer 20 or memory 86 and then discarded. Therefore, Silberschatz does not appear to disclose or suggest a test circuit configured to discard an additional data packet without storing the additional data packet in a buffer in response to a number being at least as great as a second threshold as presently claimed. As such, claim 2 is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 16 provides a step for time averaging a number before a step of storing an additional data packet into a buffer. In contrast, column 4, lines 16-18 of Silberschatz state that "the average is recomputed on the arrival of each new packet at the buffer." Therefore, Silberschatz does not appear to disclose or suggest a step for time averaging a number **before** a step of storing

an additional data packet into a buffer as presently claimed. As such, claim 16 is fully patentable over the cited reference and the rejection should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over Silberschatz in view of Skirmont '848 is respectfully traversed and should be withdrawn.

The rejection of claims 4, 5, 10, 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over Silberschatz in view of Ikeda '853 has been obviated in part, is respectfully traversed in part, and should be withdrawn.

Silberschatz concerns an early fair drop buffer management method (Title). Skirmont concerns system performance in a data network through queue management based on ingress rate monitoring (Title). Ikeda concerns a congestion control method in an ATM network based on threshold values of node queue length (Title).

Regarding claims 6 and 7, the Office Action has not provided clear and particular evidence of motivation to combine the references. In particular, the alleged motivation on page 4 of the Office Action "to improve the system performance by adjusting the packets dropping to meet different system requirements" does not appear to be credited to the references or knowledge generally

available to one of ordinary skill in the art as required by MPEP §2142. Therefore, *prima facie* obviousness has not been established. The Examiner is respectfully requested to either (i) clearly identify the source of the alleged motivation, and provide evidence if from knowledge generally available or (ii) withdraw the rejection.

Regarding claims 4, 5, 10, 14 and 15, the Office Action has not provided clear and particular evidence of motivation to combine the references. In particular, the alleged motivation on page 5 of the Office Action "to improve the system congestion control" does not appear to be credited to the references or knowledge generally available to one of ordinary skill in the art as required by MPEP §2142. Therefore, *prima facie* obviousness has not been established. The Examiner is respectfully requested to either (i) clearly identify the source of the alleged motivation, and provide evidence if from knowledge generally available or (ii) withdraw the rejection.

Claim 4 provides that the test circuit is configured to present a rate signal to the sender in a slow rate condition in response to the number being greater than the first threshold. In contrast, column 4, lines 1-9 of Ikeda appear to contemplate halting a data flow. Therefore, Silberschatz and Ikeda, alone or in combination, do not appear to teach or suggest a test circuit configured to present a rate signal to a sender in a slow rate

condition in response to a number being greater than a first threshold as presently claimed. Claim 14 provides language similar to claim 4. As such, claims 4 and 14 are fully patentable over the cited references and the rejection should be withdrawn.

Claim 5 provides that the test circuit is configured to present the rate signal to the sender in a full rate condition in response to the number being less than the first threshold. Despite the assertion on page 5 of the Office Action, column 3 lines 57-67, column 4 lines 1-16 and FIG. 1 of Ikeda appear to be silent regarding a backpressure controller 205 generating a rate signal in a full rate condition as presently claimed. Therefore, *prima facie* obviousness has not been established. Claim 15 provides language similar to claim 5. As such, the rejections of claims 5 and 15 should be withdrawn.

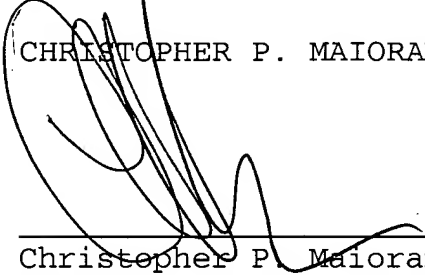
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit
Account No. 12-2252.

Respectfully submitted,

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